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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,786	10/22/2001	David H. Jerome	SIMI-003/01US	7712

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EXAMINER	
NGUYEN, CAO H	

ART UNIT	PAPER NUMBER
2173	

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/037,786	JEROME ET AL.	
	Examiner	Art Unit	
	Cao (Kevin) Nguyen	2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 October 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-27 are rejected under the judicially created doctrine of double patenting over claims 1-14 of U. S. Patent No. 6,323,882 B1 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a system and method of creating and using graphical task scheduler.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See also MPEP § 804.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chou et al. in view of Sisley (US Patent No. 5,943,652).

Regarding claim 1, Chou discloses a method of optimizing and controlling a material processing system, the method comprising the acts of creating a series of sequences with a graphical user interface by selecting and placing a plurality of tasks in a specified relationship (see col. 16, lines 56-65), wherein the plurality of tasks define functions to be performed for optimizing and controlling the material processing system (see col. 17, lines 9-36); defining a start time, a duration, and a frequency of operation of at least one of said sequences, activating said at least one sequence at the defined start time (see col. 27, lines 32-59); however, Chou fails to explicitly teach performing a specified function as defined by at least one of the plurality of tasks following the duration of each sequence; and calculating a next run-time of at least one of said sequences.

Sisley teaches performing a specified function as defined by at least one of the plurality of tasks following the duration of each sequence; and calculating a next run-time of at least one of said sequences (see col. 6, lines 6-67). It would have been obvious to one of an ordinary skill in

the art at the time the invention was made to provide performing a specified function as defined by at least one of the plurality of tasks following the duration of each sequence; and calculating a next run-time of at least one of said sequences as taught by Sisley to the system for task scheduling in order to enable for assigning and scheduling resource requests with increased speed, flexibility, and reliability.

Regarding claims 2 and 3, Sisley discloses a method, wherein at least one of the series of sequences represents a mathematical model of the material processing system (see col. 28, lines 10-38 and figure 4).

Regarding claim 4, Chou discloses, further comprising the step of controlling the material processing system using the optimized mathematical model (see figures 12-13).

Regarding claims 5 and 6, Chou discloses, wherein the series of sequences transmits control signals to a process control network (see col. 11, lines 11-67).

Regarding claims 7-9, Chou discloses, wherein at least one of said plurality of tasks comprises an input branch and at least one output branch; and wherein at least one of said plurality of tasks model is used to as a plurality of output branches (see figures 12-14).

Regarding claim 10, Chou discloses wherein the one of said plurality of output branches is selected at least partly based upon results of a conditional operation (see col. 23, lines 14-34).

Claim 11 differs from claim 1 in that "A real time graphical task scheduler used to both optimize and control a material processing system comprising: a graphical user interface, a plurality of task icons capable of being displayed on the graphical user interface, wherein each icon represents a task to be performed; a sequence development window capable of being displayed on the graphical user interface, wherein al least two of the plurality of task icons are connected to define a sequence; a sequence scheduler which controls the operation of the sequence, an optimization modeler which calculates a plurality of input variables for the sequence to optimize the material processing system operation, and a process controller receiving signals from the sequence and relaying said signals to the material processing system" which read on Chou (see col. 17, lines 9-61)

Regarding claim 10, Sisley discloses the real time graphical task scheduler of wherein at least one of said task icons is color-coded to define the state of said task (see figures 9-10).

As claims 11-19 are analyzed as previously discussed with respected to claims 2-9 above.

Claim 20 differs from claim 1 and 11 in that "selecting a first task from a list of task icons on a graphical user interface, placing the first task in the sequence, selecting a second task having a plurality of output branches from the list of task icons; adding the second task to the sequence; defining a relationship between the first task and the second task; and selecting one of the plurality of output branches of the second task based upon a defined set of criteria" which read on Chou (see col. 5, lines 5-56 and col. 26, lines 19-63).

As claims 21-43 are analyzed as previously discussed with respected to claims 1-9 and 20 above.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. (see PTO-892).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cao (Kevin) Nguyen whose telephone number is 703-305-3972. The examiner can normally be reached on M-F: 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on 703-308-3116. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CAO (KEVIN) NGUYEN
PRIMARY EXAMINER

*06/25/04